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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 MICHAEL SHEAFFER, an individual,

9 Plaintiff,

10 vs.

11 SUPERIOR TANK LINES NORTHWEST
12 DIVISION, LLC, a foreign limited liability
company,

13 Defendant.

) No.: 2:19-cv-00190-BJR

) STIPULATED PROTECTIVE ORDER

14
15 1. PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties
18 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
19 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
20 protection on all disclosures or responses to discovery, the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to
22 confidential treatment under the applicable legal principles, and it does not presumptively entitle
23 parties to file confidential information under seal.

24 2. "CONFIDENTIAL" MATERIAL

25 "Confidential" material shall include the following documents and tangible things
26 produced or otherwise exchanged:

- Plaintiff's financial information, including tax returns; and
- Plaintiff's medical information, including records of health care providers.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation
2 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of
5 confidential material, provided that counsel for the party retaining the copy or imaging service
6 instructs the service not to disclose any confidential material to third parties and to immediately
7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
10 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
12 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
13 under this agreement;

14 (g) the author or recipient of a document containing the information or a custodian or
15 other person who otherwise possessed or knew the information; and

16 (h) any mediator or other person jointly enlisted by the parties to negotiate settlement
17 discussion.

18 4.3 Filing Confidential Material. Before filing confidential material or discussing or
19 referencing such material in court filings, the filing party shall confer with the designating party,
20 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
21 remove the confidential designation, whether the document can be redacted, or whether a motion
22 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
23 designating party must identify the basis for sealing the specific confidential information at issue,
24 and the filing party shall include this basis in its motion to seal, along with any objection to
25 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
26 followed and the standards that will be applied when a party seeks permission from the court to

1 file material under seal. A party who seeks to maintain the confidentiality of its information must
2 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
3 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
4 in accordance with the strong presumption of public access to the Court's files.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each party or
7 non-party that designates information or items for protection under this agreement must take care
8 to limit any such designation to specific material that qualifies under the appropriate standards.
9 The designating party must designate for protection only those parts of material, documents,
10 items, or oral or written communications that qualify, so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or delay the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the designating party to sanctions.

17 If it comes to a designating party's attention that information or items that it designated
18 for protection do not qualify for protection, the designating party must promptly notify all other
19 parties that it is withdrawing the mistaken designation.

20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this agreement
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
22 disclosure or discovery material that qualifies for protection under this agreement must be clearly
23 so designated before or when the material is disclosed or produced.

24 (a) Information in documentary form: (e.g., paper or electronic documents and deposition
25 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the
26 designating party must affix the word "CONFIDENTIAL" to each page that contains

1 confidential material. If only a portion or portions of the material on a page qualifies for
2 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
3 making appropriate markings in the margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
5 participating non-parties must identify on the record, during the deposition or other pretrial
6 proceeding, all protected testimony, without prejudice to their right to so designate other
7 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
8 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
9 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
10 confidential information at trial, the issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent place on the
12 exterior of the container or containers in which the information or item is stored the word
13 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
14 the producing party, to the extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the designating party's
17 right to secure protection under this agreement for such material. Upon timely correction of a
18 designation, the receiving party must make reasonable efforts to ensure that the material is
19 treated in accordance with the provisions of this agreement.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
22 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
24 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
25 challenge a confidentiality designation by electing not to mount a challenge promptly after the
26 original designation is disclosed.

1 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
2 regarding confidential designations without court involvement. Any motion regarding
3 confidential designations or for a protective order must include a certification, in the motion or in
4 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
5 conference with other affected parties in an effort to resolve the dispute without court action. The
6 certification must list the date, manner, and participants to the conference. A good faith effort to
7 confer requires a face-to-face meeting or a telephone conference.

8 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
9 intervention, the designating party may file and serve a motion to retain confidentiality under
10 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
12 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
13 other parties) may expose the challenging party to sanctions. All parties shall continue to
14 maintain the material in question as confidential until the court rules on the challenge.

15 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
16 LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
19 party must:

20 (a) promptly notify the designating party in writing and include a copy of the subpoena or
21 court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
23 other litigation that some or all of the material covered by the subpoena or order is subject to this
24 agreement. Such notification shall include a copy of this agreement; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
26 designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
8 Agreement to Be Bound" that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. The parties agree
16 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain confidential material.
26

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5 DATED: 6/14/2019

s/ Peter Montine

Attorney for Plaintiff

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7 DATED: 6/14/2019


s/ Alexandra Shuman

Attorney for Defendant

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9 PURSUANT TO STIPULATION, IT IS SO ORDERED

10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
11 documents in this proceeding shall not, for the purposes of this proceeding or any other federal
12 or state proceeding, constitute a waiver by the producing party of any privilege applicable to
13 those documents, including the attorney-client privilege, attorney work-product protection, or
14 any other privilege or protection recognized by law.

15
16 DATED: June 17th 2019

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18 
19 Honorable Barbara J. Rothstein
United States District Court Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of _____ [insert formal name of the case and the number and initials assigned
8 to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
11 in any manner any information or item that is subject to this Stipulated Protective Order to any
12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____